

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2010

IN THE MATTER OF:)
)
10-YEAR FEDERALLY ENFORCEABLE) R10-21
STATE OPERATING PERMITS (FESOP):) (Rulemaking -Air)
AMENDMENTS TO 35 ILL. ADM. CODE)
201.162)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On April 20, 2010, the Illinois Environmental Protection Agency (Agency or IEPA) filed a proposal for amendments to the Board's air rules pursuant to the general rulemakings provisions of Section 27 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/27 (2008) and the Boards procedural rules at 35 Ill. Adm. Code 102.

In the Statement of Reasons (SR) accompanying the proposal, the Agency stated that this proposal would extend from five years to ten years the maximum term that the Agency could issue a Federally Enforceable State Operating Permit (FESOP). SR at 1-2. The sole provision of the air rules to be amended is Section 201.162, codified at 35 Ill. Adm. Code 201.162.

By order of May 6, 2010, the Board accepted the proposal for hearing. Today, the Board authorizes first-notice publication of the proposal without comment on the proposal's merits under the Administrative Procedure Act (APA), 415 ILCS 5/100 *et. seq.* (2008).

THE PROPOSAL

By way of background, the Agency explains that on December 17, 1992, the United States Environmental Protection Agency (USEPA) approved the provisions of the Illinois (FESOP) program as part of the State Implementation Plan (SIP) for meeting the goals of the Federal Clean Air Act (CAA). USEPA found that Illinois' FESOP program met all five criteria for approving a state operating permit program as part of a SIP. Among other things, these criteria require that

terms of the (FESOP) permit and its renewal must be legally enforceable; the terms and conditions of the permit must be at least as stringent as any other applicable limitation or requirement contained in the SIP or enforceable by the SIP or waive any requirements that are federally enforceable (*e.g.*, standards established under section 111 or 112 of the Clean Air Act); the limitations, controls and requirements in the permit must be permanent, quantifiable and otherwise enforceable as a practical matter; and the permits must be issued pursuant to public participation. *Id.*

USEPA restated its approval . . . when it approved the Clean Air Act Permit Program (“CAAPP”) pursuant to Section 39.5 of the Act. Subsection 3.3(c) of Section 39.5 of the Act, gives the Illinois EPA the authority to issue FESOPs for the purposes of limiting a sources potential to emit pursuant to the Illinois EPA’s general authority to issue state permits under Section 39(a) of the Act. SR at 1-2.

Board rules for issuance of state air pollution control permits are codified at 35 Ill. Adm. Code 201. Section 201.162 specifies the duration that permits can be issued as either subject to Section 201.169 (perpetual permits) or five years. This proposal seeks to extend the term of State operating permits from five to ten years. This proposal does not change the term of perpetual permits issued pursuant to Section 201.169 or CAAPP permits issued pursuant to Section 39.5 of the Act. SR at 2.

The Agency relates that two other states have adopted or are in the process of adopting rules extending the term of FESOPs from five to 10 years; final USEPA approval for Indiana’s rule was published at 74 *Fed.Reg.* 51240 (Oct. 6, 2009). SR at 3, and Att. A.

The Agency explains that FESOP sources are located throughout the state, and that the proposed rules will affect approximately 800 sources that that have applied for or obtained FESOPs. SR at 4 and Att. B. The Agency explains that IEPA has averaged 61 new FESOP applications each year since the year 2000 and 66 FESOP renewal applications each year over the last ten years. If the proposal is adopted,

when these applications come in and are reviewed, at the discretion of the Illinois EPA, the permits will be granted for a term of 10 years. The Illinois EPA may choose to issue a FESOP for a term shorter than ten years. FESOPs that are issued for a term shorter than ten years include situations in which the source may have been out of compliance with the applicable requirements prior to issuance of the FESOP and need to perform additional performance testing to demonstrate or confirm compliance with the applicable requirements. SR at 3.

The Agency explains that the amendments are “expected to reduce administrative costs of the permitting process for both the affected sources and the Illinois EPA.” SR at 5. The Agency states that its outreach to affected sources included e-mail in January 2010, as well as a notice on its website. The Agency states that in response, it received three oral comments. Two of these supported the proposal, while one expressed a concern.

FIRST NOTICE PUBLICATION WITHOUT COMMENT ON THE MERITS

The Board typically holds hearings on rulemaking proposals prior to initiating the APA first notice period by publication of a proposal in the *Illinois Register*. This allows the Board, the proponent, the regulated community, and the public an opportunity to familiarize themselves with the issues and the other participants’ positions. Once issues and language refinements are

better understood, the Board makes initial determinations and first notice is published in the Illinois Register.

In contrast to most proposals filed with the Board, this rulemaking involves a single section and a single issue, posing a simple question. The question is: should the Agency have the option of issuing FESOP permits for 10 years in appropriate cases?

The proposal indicates that extending the permissible permit term from 5 to 10 years will result in cost savings to the Agency and the regulated community. Under these circumstances involving such a simple rule proposal, the Board sees no reason not to expedite the hearing and comment process in this docket. The Board accordingly authorizes first notice of this proposal without comment on the merits. The hearing officer is directed to schedule hearings in July, 2010 if possible consistent with Board and Agency resource needs and applicable notice requirements.

ORDER

The Board directs the Clerk to cause APA first-notice publication in the *Illinois Register* of the following proposed rule. Additions are indicated by underlining, and deletions by overstriking.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 201
PERMITS AND GENERAL PROVISIONS

SUBPART A: DEFINITIONS

Section	
201.101	Other Definitions
201.102	Definitions
201.103	Abbreviations and Units
201.104	Incorporations by Reference

SUBPART B: GENERAL PROVISIONS

Section	
201.121	Existence of Permit No Defense
201.122	Proof of Emissions
201.123	Burden of Persuasion Regarding Exceptions
201.124	Annual Report
201.125	Severability
201.126	Repealer

SUBPART C: PROHIBITIONS

Section	
201.141	Prohibition of Air Pollution
201.142	Construction Permit Required
201.143	Operating Permits for New Sources
201.144	Operating Permits for Existing Sources
201.146	Exemptions from State Permit Requirements
201.147	Former Permits
201.148	Operation Without Compliance Program and Project Completion Schedule
201.149	Operation During Malfunction, Breakdown or Startups
201.150	Circumvention
201.151	Design of Effluent Exhaust Systems

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section	
201.152	Contents of Application for Construction Permit
201.153	Incomplete Applications (Repealed)
201.154	Signatures (Repealed)
201.155	Standards for Issuance (Repealed)
201.156	Conditions
201.157	Contents of Application for Operating Permit
201.158	Incomplete Applications
201.159	Signatures
201.160	Standards for Issuance
201.161	Conditions
201.162	Duration
201.163	Joint Construction and Operating Permits
201.164	Design Criteria
201.165	Hearings
201.166	Revocation
201.167	Revisions to Permits
201.168	Appeals from Conditions
201.169	Special Provisions for Certain Operating Permits
201.170	Portable Emission Units

SUBPART E: SPECIAL PROVISIONS FOR OPERATING PERMITS FOR CERTAIN SMALLER SOURCES

Section	
201.180	Applicability (Repealed)
201.181	Expiration and Renewal (Repealed)
201.187	Requirement for a Revised Permit (Repealed)

SUBPART F: CAAPP PERMITS

Section	
201.207	Applicability
201.208	Supplemental Information
201.209	Emissions of Hazardous Air Pollutants
201.210	Categories of Insignificant Activities or Emission Levels
201.211	Application for Classification as an Insignificant Activity
201.212	Revisions to Lists of Insignificant Activities or Emission Levels

SUBPART G: EXPERIMENTAL PERMITS

(Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

Section	
201.241	Contents of Compliance Program
201.242	Contents of Project Completion Schedule
201.243	Standards for Approval
201.244	Revisions
201.245	Effects of Approval
201.246	Records and Reports
201.247	Submission and Approval Dates

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

Section	
201.261	Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup
201.262	Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup
201.263	Records and Reports
201.264	Continued Operation or Startup Prior to Granting of Operating Permit
201.265	Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup

SUBPART J: MONITORING AND TESTING

Section	
201.281	Permit Monitoring Equipment Requirements
201.282	Testing
201.283	Records and Reports

SUBPART K: RECORDS AND REPORTS

Section

201.301	Records
201.302	Reports

SUBPART L: CONTINUOUS MONITORING

Section	
201.401	Continuous Monitoring Requirements
201.402	Alternative Monitoring
201.403	Exempt Sources
201.404	Monitoring System Malfunction
201.405	Excess Emission Reporting
201.406	Data Reduction
201.407	Retention of Information
201.408	Compliance Schedules

201.APPENDIX A	Rule into Section Table
201.APPENDIX B	Section into Rule Table
201.APPENDIX C	Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 27, 39, and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-13 at 22 Ill. Reg. 11451, effective June 23, 1998; amended in R98-28 at 22 Ill. Reg. 11823, effective July 31, 1998; amended in R02-10 at 27 Ill. Reg. 5820, effective March 21, 2003; amended in R05-19 and R05-20 at 30 Ill. Reg. 4901, effective March 3, 2006; amended in R07-19 at 33 Ill. Reg. 11965, effective August 6, 2009; amended in R10-21 at 34 Ill. Reg. _____, effective _____.

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.162 Duration

- a) No operating permit shall be valid longer than ~~ten~~ five years or such shorter period as the Agency may specify in the operating permit as necessary to accomplish the purposes of the Act and this Chapter, unless the source is subject to:

- 1) Section 201.169 of this Subpart; or
 - 2) Section 39.5 of the Act, except for sources exempt pursuant to subsection 1.1 of Section 39.5.
- b) Applications for renewal of an operating permit shall be submitted to the Agency at least 90 days prior to the expiration of the prior permit, and shall conform to Sections 201.157, 201.158 and 201.159. The standards for issuance of renewal of operating permits shall be as set forth in Section 201.160.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 17, 2010 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board